Lee Weng Fatt v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05–122–05 OF 2013
AZAHAR MOHAMED, AZIAH ALI AND HAMID SULTAN JJCA
13 OCTOBER 2014

Criminal Procedure — Appeal — Appeal against conviction and sentence — Murder — Penal Code — s 302 — Appellant injuring and killing deceased with knife during quarrel — Property belonging to deceased was found in appellant's possession — Murder weapon recovered with appellant's assistance — Whether prima facie case proven — 'Dock statement' stood as judicial confession sufficient for conviction — Radhi's direction

The deceased was said to have given a loan to the appellant and was pestering him for repayment on several occasions. The final and the fatal occasion was the day when the appellant injured the deceased with a knife which led to the death of the deceased. The appellant was charged with an offence under s 302 of the Penal Code. The appellant gave a 'dock statement' and admitted to the fact that during a quarrel the deceased was injured. Property belonging to the deceased was found in the possession of the appellant and evidence was given to say the suspected murder weapon was recovered with the assistance of the appellant. The appellant was convicted and sentenced of death and hence the present appeal against the conviction and sentence. It was submitted for the appellant that no prima facie case was proven and as such the defence should not have been called.

Held, dismissing the appeal:

(1) Once property belong to deceased is recovered from the accused and nexus to the murder weapon and the accused is shown; some level of culpability is attached to the accused, even though it may stand only as circumstantial evidence pursuant to s 114 of the Evidence Act 1950 to attract at least a prima facie case (see para 9).

(2) The duty of the appellate court, inter alia, is to look at all evidence adduced and be satisfied whether it is safe to convict. In the instant case, the 'dock statement' itself stood as judicial admission or confession sufficient for the appellate court to rule it was safe to convict (see para 13(a)).

(3) There were sufficient material to support the charge and the view taken by the trial court on the relevant issues was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and

rightly applied the maximum evaluation and beyond reasonable doubt test. It was a safe decision and appellate intervention was not warranted and the appeal had no merit (see paras 13(b) & 14).

[Bahasa Malaysia summary

Si mati dikatakan memberikan pinjaman kepada perayu dan mendesak dia untuk bayaran balik dalam beberapa kali. Kali terakhir dan fatal adalah hari apabila perayu mencederakan si mati dengan pisau yang menyebabkan kematian si mati. Perayu dituduh dengan kesalahan di bawah s 302 Kanun Keseksaan. Perayu memberi 'dock statement' dan mengaku kepada fakta bahawa semasa pergaduhan si mati tercedera. Barangan milik si mati didapati dalam milikan perayu dan keterangan diberikan menyatakan senjata pembunuhan yang disyaki diperolehi dengan bantuan perayu. Perayu disabitkan dan dihukum dengan hukuman mati dan maka rayuan ini terhadap sabitan dan hukuman. Ia dihujahkan untuk perayu bahawa tiada kes prima facie dibuktikan dan dengan itu pembelaan tidak boleh dipanggil.

Diputuskan, menolak rayuan:

(1) Sebaik saja barangan yang dimiliki si mati diperolehi daripada tertuduh dan hubungan kepada senjata pembunuhan dan tertuduh ditunjukkan; peringkat kebersalahan dihubungkan kepada tertuduh, walaupun ia mungkin berdiri sebagai keterangan keadaan berikutan kepada s 114 Akta Keterangan 1950 untuk membangkitkan sekurang-kurangnya kes prima facie (lihat perenggan 9).

(2) Kewajipan mahkamah rayuan, antara lain, adalah untuk melihat kepada kesemua keterangan yang dikemukakan dan berpuas hati sama ada adalah selamat untuk menyabitkan. Dalam kes ini, 'dock statement' dengan sendirinya berdiri sebagai pengakuan kehakiman atau pengakuan salah yang mencukupi untuk mahkamah rayuan memerintahkan ia adalah selamat untuk menyabit (lihat perenggan 13(a)).

(3) Terdapat material yang mencukupi untuk menyokong tuduhan dan pandangan yang diambil oleh mahkamah perbicaraan atas isu-isu relevan adalah pandangan munasabah keterangan atas rekod, dan mahkamah telah mengikuti arahan *Radhi* dan secara betul mengguna pakai penilaian maksimum dan ujian keraguan munasabah. Ia adalah keputusan yang selamat dan campur tangan mahkamah rayuan adalah tidak wajar dan rayuan tidak mempunyai merit (lihat perenggan 13(b) & 14).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Chin Kek Shen v PP [2013] 5 MLJ 827, CA (refd)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (folld)
Pramod Mandal v State of Bihar (SC) [2004] 4 LRI 24, SC (refd)
PP v Aszzid Abdullah [2008] 1 MLJ 281, HC (refd)
PP v Shahrael Amir Suhaimi [2014] 1 LNS 428, CA (refd)
Tong Kam Yew & Anor v PP [2013] 4 MLJ 888, CA (refd)

Legislation referred to

Evidence Act 1950 s 114

Appeal from: Criminal Trial No 45B-24 of 2011 (High Court, Kuala Lumpur)

Choong Kak Sen (CW Chan & Co) for the appellant.
Mazelan bin Jamaluddin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant's appeal in respect of conviction and sentence of death for the murder of Tan Teng Lin came up for hearing on 12 August 2014 and upon hearing we dismissed the appeal. My learned brother Azahar bin Mohamed JCA and learned sister Aziah bt Ali JCA have read the judgment and approved the same. This is our judgment.

[2] The appellant was charged as follows:

> Bahawa kamu di antara jam 11.00 malam pada 3/11/2010 hingga jam 5 pagi pada 4/11/2010 semasa berada di dalam sebuah motorjeep jenis Toyota Hilux, nombor pendaftaran WPC 3278 di tepi jalan, Jalan Awan Gelugur, Taman OUG, Off Jalan Klang Lam, di dalam daerah Brickfields, di dalam negeri Wilayah Persekutuan Kuala Lumpur telah melakukan bunuh dengan menyebabkan kematian terhadap Tan Teng Lin, Kad Pengenalan No: 880614–56–6067 dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[3] It is well settled that it is in the hands of the trier of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction. In so doing if the court orders an acquittal or conviction it cannot be set aside by the appellate court unless it records a finding that the view taken by the trial court was not a possible reasonable view of the evidence on record (see *Pramod Mandal v State of Bihar (SC)* [2004] 4 LRI 24).

[4] The petition of appeal reads as follows:

1) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa pihak pendakwaan telah Berjaya membuktikan suatu kes prima facie terhadap Perayu.

2) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa pihak pendakwaan telah berjaya membuktikan setiap intipati pertuduhan di bawah Seksyen 302 Kanun Keseksaan.

3) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai bahawa pihak pendakwaan telah gagal untuk membuktikan intipati waktu/masa dan tempat kematian si mati.

4) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila menehma dan mempercayai keterangan saksi-saksi pendakwaan.

5) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal untuk menilai bahawa terdapat kelompangan atau gap yang material dalam kes pihak pendakwaan.

6) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan percanggahan yang material dalam keterangan SP7 sendiri.

7) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila menerima keterangan SP7 berkaitan tempat SP7 dan si mati menunggu Perayu adalah tempat yang sama dengan penemuan pisau (P52B).

8) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal mengambilkira bahawa SP7 adalah saksi berkepentingan (interested witness).

9) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dalam keterangan SP8 berkaitan pisau (P528).

10) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai bahawa pihak pendakwaan telah gagal untuk membuktikan bilik tersebut adalah bilik yang disewa oleh Perayu.

11) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat percanggah-an yang material di antara keterangan SP10 dan P60.

12) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan/atau kelompangan dalam keterangan SP10 berkaitan analisis dan keputusan ujian DNA.

13) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila menerima masuk P73A dan P74 sebagai bukti/keterangan dalam kes pihak pendakwaan dan seterusnya memutuskan bahawa orang yang dilihat di dalam rakaman P73A tersebut adalah sebenarnya Perayu.

14) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan percanggahan yang

A material antara saksi-saksi pendakwaan dan antara saksi-saksi pendakwaan dengan exhibit-exhibit yang dikemukakan oleh pihak pendakwaan.

15) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan percanggahan yang material antara saksi-saksi pendakwaan berkaitan penemuan P52B, tempat penemuan P52B dan penemuan barang-barang kes yang lain.

B

16) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa penemuan P52B dan barang- barang kes yang lain adalah hasil maklumat dari Perayu.

C 17) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan percanggahan yang material antara keterangan SP11, SP17, P61, P62, P67, P68 dan P69.

18) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keraguan dan percanggahan yang material tentang keterangan SP17 berkaitan P86, P87 dan P88.

D

19) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai terdapat keterangan yang menunjukkan bahawa tidak ada nexus link antara Perayu dengan P52B.

E 20) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila menerima keterangan SP11 dan SP17 tentang pengakuan Perayu.

21) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai tiada kata-kata amaran diberikan kepada Perayu oleh SP11 dan SP17.

F

22) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai keterangan SP15 berkaitan kemungkinan kecederaan dan kematian si mati bukan berpunca dari Perayu.

G 23) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai keterangan mengenai punca kematian simati dan sebaliknya memutuskan bahawa pihak pendakwaan telah berjaya membuktikan Perayu yang menyebabkan kecederaan dan kematian si mati.

H 24) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila menerima keterangan SP15 bahawa P52B adalah senjata yang boleh mengakibatkan kecederaan yang terdapat pada badan simati.

25) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai bahawa siasatan yang dijalankan oleh SP18 adalah tidak adil, tidak lengkap dan tidak betul.

I

26) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal untuk menilai Perayu tidak pernah melarikan diri sewaktu dalam jaminan polis sementara menunggu untuk dituduh di mahkamah.

27) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau

undang-undang apabila gagal untuk menolak keterangan 'hearsay' oleh saksi-saksi pendakwaan. A

28) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal untuk menilai kegagalan SP18 untuk membawa Perayu ke hospital untuk melakukan pemeriksaan badan.

B

29) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila mengaitkan kematian si mati dengan Perayu berdasarkan kepada keterangan ikut keadaan (circumstantial evidence).

30) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa penemuan P52B dan barang-barang kes yang lain telah menunjukkan penglibatan atau hubungan Perayu dengan kematian si mati. C

31) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan Perayu mempunyai niat untuk melakukan kecederaan pada si mati dan kecederaan tersebut boleh menyebabkan kematian si mati. D

32) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa kecederaan yang dilakukan oleh Perayu ke atas si mati bukan dilakukan secara tidak disengajakan. E

33) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal memberikan faedah keraguan kepada Perayu dan gagal untuk membuat inferens yang memihak kepada Perayu.

34) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menggunapakai inferens bertentangan di bawah Seksyen 114(g) Akta Keterangan 1950 terhadap kes pendakwaan apabila gagal memanggil saksi penting iaitu Carmen Lu Ngan Yee. F

35) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal untuk menilai terdapat putusan rantaian keterangan dalam kes ini. G

36) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan pembelaan Perayu adalah tidak credible.

37) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila gagal menilai bahawa pembelaan Perayu telahpun menimbulkan keraguan yang munasabah terhadap kes pihak pendakwaan. H

38) Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi fakta dan/atau undang-undang apabila memutuskan bahawa pihak pendakwaan telah berjaya membuktikan suatu kes di luar keraguan yang munasabah. I

[5] Even though the petition of appeal is lengthy the issues are straight forward, more so when the death of the deceased has nexus to the appellant. And the appellant in the dock statement at p 206 has stated as follows:

A Lepas itu, saya rasa tangan kanan Kenny lepas leher saya. Pada masa itu, saya baru sedar apa saya telah buat kerana Kenny telah kena tikam. Oleh kerana saya tolak tangan Kenny dan menyebabkan pisau menikam Kenny. Dan saya pun tanya Kenny 'macam mana sekarang?' Kenny suruh saya tolong dia hantar dia ke hospital UKM.

B Saya beritahu Kenny saya tidak pernah memandu kereta dan Kenny pun ajar saya macam mana masuk gear dan jalan. Lepas itu, saya pun buka pintu kiri dan keluar ke tempat Kenny dan bawa Kenny keluar. Bila saya mahu angkat Kenny, pisau itu masih dalam dada Kenny. Saya pun cabut pisau itu dan buang kearah kanan kereta atas bukit.

C

BRIEF FACTS

[6] The deceased is said to have given a loan to the accused and was pestering him for repayment on several occasions. The final and the fatal D occasion was the day when the accused injured the deceased with a knife which led to the death of the deceased. The accused gave a 'dock statement' and admits to the fact that during a quarrel the deceased was injured.

E **[7]** The learned trial judge had written a 61 page judgment setting out the facts and law comprehensively. We do not think it is necessary to set out the facts in any detail as the incident, parties and the injury is not in dispute. Further, learned counsel for the appellant has limited the submission to that there was no prima facie case and defence ought not to be called. The F appellant's line of submission is well reflected in the petition of appeal and no other form of defence under the law was raised to reduce the charge at least to manslaughter.

[8] It must be noted that learned counsel in a lengthy written submission G was very passionate to canvass that there was no prima facie case, relying on technical issues and not addressing the court that property belonging to the deceased was found in the possession of the accused and evidence was given to say the suspected murder weapon was recovered with the assistance of the accused. *We must remind that counsel are officers of court and have a duty to assist* H *the court candidly and are obliged to put the best defence in law and not suppress in the submission the relevant facts and law the court has to consider before coming to a just conclusion*. (Emphasis added.)

[9] It must not be forgotten once property belong to deceased is recovered I from the accused and nexus to the murder weapon and the accused is shown; some level of culpability is attached to the accused, even though it may stand only as circumstantial evidence pursuant to s 114 of the Evidence Act 1960 to attract at least a prima facie case. In *Public Prosecutor v Shahrael Amir Suhaimi* [2014] 1 LNS 428, sitting with Abdul Malik Hj Ishak JCA and Azahar

Mohamed JCA, I had the opportunity to deal with jurisprudence relating to circumstantial evidence in great detail. And, inter alia, I had this to say:

> [13] It is also not in dispute that incriminating evidence as well as items belonging to the deceased were recovered from the accused and/or bag which he was said to be in possession of or at least had nexus to. This per se will attract criminal culpability pursuant to s 114 of the EA 1950 which states:
>
> > The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> [14] Where circumstantial evidence is in issue, as a general rule by the application of the maximum evaluation test at the prosecution stage, the prosecution ordinarily may not be able to convince the court that the prima facie case has been established. *However, by the application of s 114 of the EA 1950 the court in the instant case is obliged to look at the totality of the evidence more so when incriminating evidence as well as property of the deceased were found in the possession of the accused or were found in such circumstances where nexus can be inferred to rule that a prima facie case has been established. Section 114 presumption will require in law for the accused to speak out on his innocence at the defence stage to earn an acquittal. Section 114 actually assists the prosecution to whittle down the maximum evaluation test at the prosecution stage only.* Similarly s 37(d) or s 37(da) of the Dangerous Drugs Act 1952 or even s 34 of the Penal Code has the effect of whittling down the maximum evaluation test at the prosecution stage if by law it becomes operative. Trial judges must take note of the distinction when considering the maximum evaluation test at the end of the prosecution stage. (Emphasis added.)
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> [15] Despite strong circumstantial evidence against the accused, the learned trial judge in many parts of her judgment had attempted to reason out that it was not sufficient to establish a prima facie case without considering the statutory obligation set out in s 114 in favour of the prosecution. One example is found at p 23 which reads as follows:
>
> > The bloodstain found on the knife bore the mixed DNA profiles of the three victims (see P89, SP13's chemist report). The knife was recovered by SP18 from the bag P15A together with other items like P14A, P39A, P74, P75B, P115A, P116A, P117A, P118A, P119A, P120A, P121A and P122A (see P111) but only a small bloodstain between the handle and the blade was found on the knife.
>
> [16] It is well settled to find culpability based on circumstantial evidence, the evidence must be sufficiently strong to convict. When it relates to a charge of murder courts have convicted notwithstanding there was (i) no eye witness even after the crime was committed; (ii) no body of the deceased was found; (iii) no murder weapon was found; and (iv) no nexus to the murder was established save as to irresistible inference based on documentary evidence per se. (See *Sunny Ang v PP* [1967] 2 MLJ 195).
>
> [17] In the instant case the conduct of the accused as well as stolen items of the deceased, the murder weapon, blood stains, and the proximity of time of the phone call as well as the conduct of the accused and his oral statement 'bukan saya yang

A buat', etc; will clearly warrant the defence to be called. In addition, it is not for the learned trial judge to test the truthfulness of the evidence of SP5 and/or SP6 at this stage when s 114 of the EA 1950 becomes operational without hearing the evidence of the accused when nexus has been established.

B **[10]** At the close of the prosecution case, the appellant had submitted no prima facie case and the learned trial judge had set out the submission in the grounds of judgment and it can be summarised as follows:

(a) That there was no direct evidence against the accused and the prosecution
C was basing its case on circumstantial evidence only;

(b) Although items belonging to the deceased were found in a room rented by the accused, there was no evidence that the accused had the sole and exclusive occupation of the room;

D (c) The Investigating Officer, ASP Erwansyah bin Abdul Basir, was not diligent in investigating the case because:

(i) he had left important exhibits — blood and urine samples — in his office for 12 days before sending it to the chemist for analysis. This might have affected the samples that were sent;

E (ii) he had failed to send the accused for a physical examination or his nail clippings for analysis; and

(iii) the accused was not asked to wear and fit the T-shirt and shorts recovered from his rented room.

F (d) Dr Mathiharan (PW15) who performed the post-mortem had said that it was not impossible for the deceased to have had a struggle with an assailant, and for the deceased to have been stabbed in the course of the struggle, whether the knife was in his hand or in the assailant's hand;

G (e) The CCTV recording was inconclusive of anything and only shows a person coming out of the vehicle and climbing into the back of the vehicle. The images were dark and unclear and the facial features of the person could not be seen.

H **[11]** The learned trial judge had also set out the prosecution grounds for asserting that a prima facie case had been established. The grounds can be summarised as follows:

(a) That the accused did an act which caused the death of the deceased;

I (b) That the act was done with the intention of causing bodily injury;

(c) That the injury caused:

(i) was intended and was not accidental or otherwise unintentional; and

(ii) was sufficient in the ordinary course of nature to cause death.

(d) The accused was arrested on 5 November 2010 at 2.15am at Internet Estern, about a day after the deceased was found dead. He had red PW11, PW17 and a police party to his rented room at No 37, Jalan Hujan Gerimis, Taman OUG. There, PW1 had recovered various items from the room which included the following:

(i) a black Nike backpack (P48) which contained a yellow towel (P498) with splotches of blood and an EON Bank book in the name of the accused. A mixed DNA profile was developed from a swab of the black bag with the accused and the deceased being identified as the major and minor contributors of the mixed DNA profile. The DNA profile developed from the blood splotches on the yellow towel matched the DNA profile of the deceased;

(ii) the deceased's POLO wallet containing the deceased's personal documents such as his identity card, driving licence. ATM Bank card, Visa and Mastercard credit cards, an E-72 Nokia handphone and the keys to the deceased's Toyota Hilux were recovered from a small table in the accused's rented room; and

(iii) a black T-shirt and a pair of black shorts bearing blood stains were found in the room. DNA analysis of the blood stains on these two items matched the DNA profile of the deceased.

(e) the CD recording from the CCTV showed a person wiping down the motor vehicle with a cloth of some sort;

(f) evidence was adduced that the accused and the deceased knew one another albeit that the accused had borrowed monies from the deceased. The evidence of PW7 is very pertinent in establishing that on 24 October 2010, PW7 and the deceased had gone to the location as shown in P14 (photos 7 and 8) to meet with the accused who had promised to return RM20,000 to the deceased that night. However, the accused had not turned up. Because the place of the rendezvous was dark and secluded, PW7 had advised the deceased not to meet with the accused in such a place if invited again to do so;

(g) the location of the place identified by PW7 as the place where he and the deceased had waited for the accused is the same location where the accused had led a police team to the recovery of the knife (P528);

(h) the evidence of PW8, the owner of the house where the accused rented a room to the effect that a kitchen knife was missing from her kitchen and her identification of the knife that was recovered as similar to the knife that she had lost; and

(i) the evidence of Dr Karunakaran Mathi Haran (PW 15) who conducted the post mortem that a knife such as P52B could have caused the injury that was inflicted on the deceased.

[12] The learned trial judge had given lengthy grounds to justify for defence to be called. It is sufficient if we produce two paragraphs which read as follows:

88 The court is of the view that the recovery of the personal belongings of the deceased as well as the yellow towel and the clothing found to bear stains of the deceased's blood in the rented room of the accused so soon after the body of the deceased was discovered points irresistibly to the involvement or connection of the accused to the death of the deceased. Although the CCTV recording was admittedly not sufficiently clear to be able to identify the facial features of the person in the video, the court is satisfied that the build of the person who was seen in the video going around the vehicle with a cloth and riding away on a motorcycle is not dissimilar to the build of the accused. The advantage of the video is more towards seeing what the person in the video was doing: he was seen going into the back of the vehicle and emerging only after some minutes. He was seen cleaning or wiping off parts of the vehicle. The subsequent recovery of the blood stained towel in a backpack in the accused's room would point to the fact that the person in the CCTV recoding was the accused and he was wiping off blood stains on the Toyota Hilux with the towel (P498).

89. The court also notes the evidence of Insp Tay Chew Thwa (PW 11) as to the information that was given by the accused which had led to the recovery of the knife (P52B). It was after the search of the accused's room and the seizure of the deceased's personal belongings as well as the accused's blood-stained clothes from the room that the accused had given PW11 the following information:

> Itu pisau saya buang di semak tepi Jalan Gelugur, Taman Yarl dan saya boleh tunjuk.

[13] We have read the appeal record, petition of appeal and the submission of the parties. We are grateful for the comprehensive submission. After much consideration to the submission of learned counsel for the appellant, we take the view the appeal must be dismissed. Our reasons, inter alia, are as follows:

(a) the duty of the appellate court, inter alia, is to look at all evidence adduced and be satisfied whether it is safe to convict. In the instant case, the 'dock statement' itself will stand as judicial admission or confession sufficient for the appellate court to rule it is safe to convict. Support for the proposition is found in a number of cases. In *Janab's Key to Law of Evidence*, (4th Ed), (2014) at p 183 the authors says:

> Unsworn statement of the accused must be considered by the court and cannot be rejected on the grounds it is not evidence on oath or has no probative force. Dock statement, oral or in written form, need to be considered by the court in the right perspective even though it may have low probative value,

(b) We have perused the evidence in detail and we are satisfied that there are sufficient material to support the charge and the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt test (see *Public Prosecutor v Aszzid Abdullah* [2008] 1 MLJ 281; *Tong*

Kam Yew & Anor v Public Prosecutor [2013] 4 MLJ 888; *Chin Kek Shen v Public Prosecutor* [2013] 5 MLJ 827).

[14] We are of the considered view that it is a safe decision and appellate intervention is not warranted and the appeal has no merit. Accordingly we dismiss the appeal.

[15] We hereby order so.

Appeal dismissed.

Reported by Kanesh Sundrum